Supreme Court, U.S.
FILED

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Michael S. Young,

Petitioner,

v.

General Motors Corporation, a Delaware corporation, and Saturn Corporation, a GM subsidiary, a Delaware corporation, Jointly and Severally,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

MICHAEL S. YOUNG
Pro Se

2013 OAK LEAF COURT NORTH
ROCHESTER HILLS, MI 48309
(248) 650-9782

Petitioner

BECKER GALLAGHER LEGAL PUBLISHING, INC.,
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18 RP

QUESTION PRESENTED

Whether the District Court erred in granting Defendants' motion to dismiss and sanctioning Plaintiff in light of Plaintiff's entitlement to assert a private right of action pursuant to 38 U.S.C. §4212 under the peculiar facts of this case?

PARTIES TO THE PROCEEDING

Petitioner

Petitioner, Michael S. Young, is an individual and has no corporate affiliations.

Respondents

General Motors Corporation, a Delaware Corporation, and Saturn Corporation, a GM Subsidiary, a Delaware Corporation, Jointly and Severally.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is unpublished. A copy of the Order is included in the Appendix at App. A, page 1a. The Order of the District Court for the Eastern District of Michigan is unpublished and is included in the Appendix at App. B, page 4a. The District Court ordered entry of the final judgment on September 29, 1998, which is printed in the Appendix at App. B, page 4a.

JURISDICTION

The United States Court of Appeals for the Sixth Circuit issued its Order on September 24, 1999. This Petition for Writ of Certiorari is filed within 90 days of the Sixth Circuit Opinion affirming the District Court for the Eastern District of Michigan Order. The Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1254(1) and 2106.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

38 U.S.C. § 4212

STATEMENT OF THE CASE

This case involves Defendants' blatant disregard of the rights of a qualified American Vietnam Era Veteran. The District Court improperly granted Defendants' motion to dismiss because Congress could not have intended for a federal statute to be completely devoid of enforcement. Where persons protected by an act of Congress have been blatantly ignored by the "administrative body" charged with

statutory enforcement, courts should not dismiss a subsequent action merely because Congress has not "expressly" provided for a private right of action under that particular statute. Rather, this Court should look to the peculiar facts of this case, reverse the District Court's decision granting Defendants' motion to dismiss, and allow Plaintiff's claim to be submitted to a jury.

STATEMENT OF FACTS

Plaintiff is a United States citizen, an African-American, and a Vietnam Era Veteran who resides in Rochester Hills, Michigan. From February 24, 1972 until June 1, 1987, he was a salaried employee in good standing working in the personnel department for Defendant General Motors' Electro-Motive Division in LaGrange, Illinois. At all times, and for all duties to which he was assigned, Plaintiff performed his job satisfactorily or better. Plaintiff's Complaint ¶2 & 9. See also the personnel documents submitted as Exhibit B to Plaintiff's Complaint.

On June 1, 1987, Plaintiff was transferred, with all salary, benefits and service credits, to Defendant Saturn's "People Systems" in Troy, Michigan, which functioned as its personnel department. At all times, and for all duties to which he was assigned, Plaintiff performed his job satisfactorily or better. Plaintiff's Complaint, ¶10. Throughout his 21 years with Defendants, Plaintiff was promoted to 7th level manager based upon his hard work and achievement. Plaintiff's Complaint, ¶11. Nevertheless, on April 30, 1993, Defendants, without any justification, fired Plaintiff. Plaintiff's Complaint, ¶12. While Defendants claim that Plaintiff was fired in the "course of a corporate reorganization and downsizing," Plaintiff was literally the only person even effected, let alone fired, as a result of the

alleged "reorganization." Plaintiff's Complaint, ¶17. In addition, Plaintiff's skill and education, including the fact that he has a master's degree, more than qualified him for his position with Defendants. Exhibit B to Plaintiff's Complaint.

Based upon Defendants' discriminatory actions which clearly violated 38 U.S.C. § 4212, Plaintiff immediately sought the "administrative remedies" allegedly afforded him under the statute. Plaintiff's Complaint, ¶18. See also Exhibit C to Plaintiff's Complaint. After Plaintiff's initial go-round with the Department of Labor, Defendant Saturn offered Plaintiff one year's salary and out-placement counseling. Plaintiff's Complaint, ¶18. This offer was a complete mockery because Plaintiff was entitled to reinstatement pursuant to the express terms of the statute.

On October 14, 1994, the Department of Labor closed its investigation of Plaintiff's complaint without cause. Exhibit D to Plaintiff's Complaint. Plaintiff's subsequent efforts to obtain a final resolution from the Department of Labor regarding the appropriate remedy are nothing less than staggering! The day after Plaintiff received the Department of Labor's dismissal letter, Plaintiff immediately appealed the determination. See Exhibit E to Plaintiff's Complaint. Despite Plaintiff's right and entitlement to a timely response from the Department of Labor regarding Plaintiff's correspondence prompting the reconsideration of the Department of Labor's abandonment of Plaintiff's claim against Defendants, the Department of Labor has, for nearly five years, outright ignored Plaintiff in derogation of his protected rights and has refused to render a final decision with respect to the merits of Plaintiff's entitlement to employment with Defendants. Plaintiff's Complaint, ¶22-24.

Still, on a monthly basis, Plaintiff has literally pleaded, through letters and otherwise, with the Department of Labor to render a decision regarding his entitlement to employment with Defendants. The Department of Labor responded during this time period with one letter dated February 6, 1996, in which they indicated that it would be "forwarding [its] determination to [Plaintiff] shortly." Attached hereto as Exhibit A. To date, the Department of Labor has failed and refused to render a decision with respect to Plaintiff's employment situation. From February 25, 1997 until January, 1998, Plaintiff has continuously written the Department of Labor indicating that if it did not forward a decision regarding Plaintiff's employment situation with Saturn within a reasonable time period, Plaintiff would be granted the "unequivocal legal private right of action to pursue this matter in the federal court." See Exhibit F to Plaintiff's Complaint.

Based upon the Department of Labor's complete failure to respond to Plaintiff's numerous inquiries regarding his employment situation and a re-determination regarding its initial recommendation, the Department has unequivocally indicated that Plaintiff be granted a private right of action to pursue his legal right and entitlement to employment with Defendants pursuant to 38 U.S.C. §4212. Plaintiff's Complaint, ¶26.

SUMMARY OF ARGUMENT

The District Court erred in granting Defendants' motion to dismiss because Plaintiff's only alleged administrative remedy, the United States Department of Labor, outright ignored Plaintiff. Thus, Plaintiff is entitled to have his claim under 38 U.S.C. §4212 heard by a jury of his peers.

ARGUMENT

The District Court committed reversible error in granting Defendant-Appellee's motion to dismiss and in sanctioning Plaintiff-Appellant because Plaintiff-Appellant has exhausted his administrative remedy under 38 U.S.C. §4212, but was ignored. Accordingly, a private right of action is required in this case.

Defendants went to great lengths at the District Court to point out that Congress did not intend for a "private right of action" to exist to enforce the provisions of 38 U.S.C. § 4212. Defendant-Appellee, however, completely ignores Plaintiff's painstaking efforts in his Compliant to point out that his alleged "administrative remedy" was abandoned and ignored on dozens of occasions. Congress could not possibly have intended such a result.

Defendants' reliance upon Harris v. Adams, 873 F. 2d 929 (6th Cir. 1989), not only does not support their position, but rather, it undermines it. In Harris, the Court ruled that Congress did not expressly provide for a private right of action relative to 38 U.S.C. §4212. The Court also held, under the facts of that case, that Congress did not impliedly

provide for a private right of action. In so holding, the Court was bound by the principals announced by the Supreme Court in Cort v. Ash, 422 U.S. 66, 78; 95 S. Ct. 2080, 2087; 45 L.Ed. 2d 26 (1975), which provides:

> In determining whether a private right of action is implicit in a statute, courts consider: (1) whether the plaintiffs are members of the class for whose particular benefit the statute was intended; (2) whether the legislature intended to authorize private actions; (3) whether a federal cause of action would further the underlying purpose of the legislative scheme; and (4) whether the asserted private action is one traditionally reserved for state law, such that it would be inappropriate to infer a federal cause of action.

The Court held that the plaintiff in Harris, as does Plaintiff in this case, had met the first and fourth Cort factors but failed with respect to the second and third. Regarding the second and third factors, the Court stated:

> First, the VRA [38 U.S.C. § 4212] expressly provides a remedy through an administrative enforcement scheme, and we note that courts should not expand statutes to provide various remedies where the legislature has expressly provided one. Second, neither the statutory language nor the its legislative history indicate any congressional intent to have the VRA serve as the basis of a private right of action. Third, implying a private right of action would conflict with the administrative scheme established by the VRA [citations omitted].

Here, however, each of the concerns expressed by the Harris Court are not implicated. First, Plaintiff has not been provided with an "administrative remedy." Rather, the Department of Labor has, for years, outright ignored him.

Second, the legislative history and the express provisions of the statute must be considered in light of the adequacy of the alleged administrative remedy. Here, Plaintiff has had no determination and thus has not been provided with a remedy. Therefore, and to address the Harris Court's third concern, implying a private right of action will not conflict with the "administrative scheme" established by the VRA because in this case, there is no administrative scheme, only the Department of Labor's outright refusal to provide Plaintiff with a determination of his rights. Finally, the Department of Labor itself has indicated that Plaintiff be granted a private right of action. See Exhibit F to Plaintiff's Complaint (which the department ignored).

CONCLUSION

The District Court erred in granting Defendants' motion to dismiss because Plaintiff's only alleged administrative remedy, the United States Department of Labor, outright ignored Plaintiff. Thus, Plaintiff is entitled to have his claim under 38 U.S.C. §4212 heard by a jury of his peers.

/s/_____
Michael S. Young
Pro Se Petitioner
2013 Oak Leaf Court North
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(248) 650-9782
Petitioner

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[Filed September 24, 1999]

No. 98-2132

MICHAEL S. YOUNG, *Plaintiff-Appellant,*	)
v.	)
GENERAL MOTORS CORPORATION, a Delaware Corporation; and SATURN CORPORATION, a GM subsidiary, a Delaware Corporation, jointly and severally, *Defendants-Appellees.*	)

ORDER

Before: MERRITT, NELSON, and SILER, Circuit Judges.

Michael S. Young, a Michigan citizen, appeals pro se a district court order dismissing for failure to state a claim the complaint he filed pursuant to the Vietnam Era Veterans' Readjustment Assistance Act (VEVRA), 38 U.S.C. § 4212. This case has been referred to a panel of the court pursuant to

Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Young's complaint alleged that the defendants violated VEVRA when they discharged him in 1993, after twenty-one years of employment. Young filed a charge with the Department of Labor, as provided in VEVRA, and an initial determination of a violation was made. The defendants were invited to settle the matter, and they offered Young a year's salary and outplacement counseling. Young rejected this offer, insisting on reinstatement.

The Department of Labor determined to abandon the matter, and Young filed an appeal. He alleges that he has never received a final decision on his appeal, despite numerous requests for a ruling. Many of his letters of inquiry indicated that, if he did not receive a final decision, he would deem himself enabled to bring a private cause of action. The defendants argue that Young did receive a final decision in 1997. The letter they reference, however, although it mentions Young's veterans' preference claim, was not a decision addressed to Young; it was a response to an inquiry by the defendants about a separate race discrimination claim Young had filed.

The defendants filed a motion to dismiss for failure to state a claim, as well as a motion for Rule 11 sanctions. Young filed responses, and the district court heard argument on the motions. The motion to dismiss for failure to state a claim was dismissed from the bench on the ground that no private right of action exists under VEVRA. An order was then entered dismissing the complaint and awarding Rule 11

sanctions orS100. Young reasserts the merits of his claim on appeal, although he expressly states that he is not appealing the award of sanctions.

Upon review, we conclude that the dismissal of this complaint for failure to state a claim must be affirmed because it is clear that Young can prove no set of facts which would entitle him to relief. See *Sistrunk v. City of Strongsville,* 99 F.3d 194, 197 (6th Cir. 1996), *cert. denied,* 520 U.S. 1251 (1997).

Young is not entitled to bring a private cause of action under VEVRA. See *Harris v. Adams,* 873 F.2d 929, 931-32 & n.2 (6th Cir. 1989); *Barron v. Nightingale Roofing, Inc.,* 842 F.2d 20, 21-22 (lst Cir. 1988). Although Young attempts to distinguish his case by arguing that there is no administrative proceeding with which a court action would conflict, the most important factor in determining whether a private right of action exists is congressional intent. The requisite intent is clearly lacking here. See *Harris,* 873 F.2d at 932 n.2. Therefore, assuming the truth of Young's allegation that the Department of Labor has failed to process his appeal, the complaint does not state a claim.

Accordingly, the dismissal of this complaint for failure to state a claim is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/_____
Leonard Green, Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

[Filed September 29, 1998]

No. 98-73507

MICHAEL S, YOUNG,
Plaintiff;

v.

GENERAL MOTORS CORPORATION, a Delaware corporation, and SATURN CORPORATION, a GM subsidiary, a Delaware corporation, jointly and severally,
Defendants.

ORDER

THE COURT, having considered Defendants' Motion to Dismiss, Document 11, filed July 27, 1998; having considered Defendants' Motion for Rule 11 Sanctions, Document 13, filed Aught 7, 1998; having considered Plaintiff's Counter-Motion for Sanctions, Document 16, filed August 14, 1998; having heard oral argument on Tuesday,

September 29, 1998; and being otherwise fully apprised in the premises;

HEREBY GRANTS Defendants' Motion to for Sanctions in the mount of $100, and **DENIES** Plaintiff's Counter-Motion for Sanctions for the reasons stated on the record.

IT IS SO ORDERED.

/s/_____
HON. VICTORIA A. ROBERTS
UNITED STATES DISTRICT COURT

dated: SEP 29 1998